IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.61/2001

Kadamba Transport Corporation Ltd.,
a Company having their Office
at KTCL Bus Stand, Panaji, Goa
represented herein by their
Managing Director Shri A. Bhartu. .... Appellants.

V/s.

1. Smt. Vaishali Vassudev Porob,
major, widow,

2. Mast. Varuna Vassudev Porob,
minor aged 14 years,

3. Mast. Vipin Vassudev Porob,
manor, aged 10 years,
all having address at House No.34,
Codar, Khandepar, Ponda, Goa.

4. Mr. Gajanan P. Naik, driver,
at Kadamba Depot, Porvorim, Goa. .... Respondents.

Mr. Ajit R. Kantak, Advocate for the appellants.

Mr. J.P. Mulgaonkar, Advocate for the respondents No.1 to 3.

CORAM : N.N. MHATRE &
P.V. HARDAS, JJ.

DATE : JANUARY 21, 2004.

ORAL JUDGMENT : (Per HARDAS, J.)

The appellants by this First Appeal challenge the Judgment, dated 6.11.2000 passed by the Presiding Officer, Motor Accident Claims Tribunal, at Mapusa in Claim Petition No.85/98, awarding compensation of Rs.10,09,688/- with interest of 12 % per annum from the date of filing of the application till 30 days from the

date of Judgment.

2. The facts, in brief, as are necessary for the decision of the appeal, are set out hereunder:

Respondent No.1 is the widow of the deceased Vassant Porob, while respondents N.2 and 3 are the minor children of the deceased Vassant Porob who met with an accident while driving the scooter bearing registration No.GA-01/R-4145 with the bus bearing registration No.GA-01/X-0163, driven by respondent No.4. The deceased Vassant Porob was working as Machineman Grade I in the Government Printing Press, Panaji and was drawing salary of Rs.6,977/-. After deductions his salary was Rs.3,568/-. An application for compensation under section 166 of the M.V. Act came to be filed by respondents No.1 to 3 claiming compensation of Rs.10,22,332/-. Learned Presiding Officer on consideration of the evidence, awarded Rs.10,04,688/- as compensation and further awarded a sum of Rs.5,000/- as funeral expenses. Thus, the total compensation awarded to respondents No.1 to 3 was Rs.10,09,688/-. Against this Judgment, the appellants have preferred the present appeal.

3. Mr. A.R. Kantak, the learned Counsel appearing on behalf of the appellants has urged before

us: (1) that there was no evidence that the bus of the appellants was being driven in a rash and negligent manner by respondent No.4; (2) the learned trial Court has applied a multiplier of 18 which is not correct as the multiplier of 16.2 ought to have been applied; and (3) the learned trial Court was in error in awarding the interest at the rate of 12 % and the interest at the rate of 9 % ought to have been awarded. Mr. J.P. Mulgaonkar, the learned Counsel appearing on behalf of the respondents No.1 to 3 has defended the Judgment of the learned trial Court and has urged that the appeal is devoid of any merit and deserves to be dismissed.

4. In the present case, there were no eye witnesses to the accident. AW.3 Vassudev Sawant, Head Constable who drew the scene of offence panchanama and sketch, has produced the same at Exhibit AW.3/A and AW.3/B. According to him, the scene of accident was a spot near Azad Bhavan at Porvorim at National Highway-17. A Kadamba bus bearing registration No.GA-01/X-0163 was heading towards Panaji while Vespa scooter bearing registration No.GA-01/P-4145 was heading towards Porvorim. In cross examination, it is admitted that the width of the tar road was 8.70 metres. There was a bifurcation marking of the road at the place of the accident. The front side tyre of the bus was on the bifurcation line. The distance between the front right

tyre and the edge of the tar road on the right side was 5.25 metres. Behind the Kadamba bus, there were brake marks of 5.25 metres of the left rear tyre and were not straight. He has also admitted that at the time of the accident, the road had a slight curve and the scooter heading towards Porvorim had sufficient place of 5.25 metres to proceed. From the sketch at Exhibit AW.3/B, it is clear that the bus had crossed the bifurcation line. The right side wheels of the bus had crossed the bifurcation line. Sketch of the scene of accident depicts the position of the vehicles after the accident. It is apparent from the sketch that while negotiating the curve, the bus had crossed the bifurcation line and had dashed against the scooter coming from the opposite direction. Brake marks would also indicate that the bus was at a considerable speed. The position of the scooter does not indicate that there was any rashness on the part of the scooterist. Whereas, it is clear that the bus was being driven in a rash and negligent manner. Therefore, according to us, respondents No.1 to 3 had been able to establish that the bus was being driven in a rash and negligent manner.

5. Respondent No.4 had, in fact, examined himself as RW.1. He states that one scooterist was trying to overtake a Maruti van. On seeing the two vehicles, he had slowed down the bus and, according to

him, the scooterist gave a dash on the right front side corner. In the cross examination he states that he had taken the bus to the extreme edge of the road. According to us, this defence of respondent No.4 is obviously an after-thought as the sketch clearly indicates that the bus had crossed the bifurcation line, at least the right side wheels had crossed the bifurcation line. Thus, in our opinion, it is established that the bus was being driven in a negligent manner.

6. The learned trial Court while applying the multiplier of 18 has stated that the date of birth of the deceased was 29.2.1956 and the accident had occurred on 26.8.1996 and, therefore, according to the trial Court, the deceased was hardly 40 years of age. According to the learned trial Court he would have been in employment upto the age of 18 and, therefore, the learned trial Court applied the multiplier of 18. Mr. Kantak has pointed out that the accident occurred on 28.12.1997 and not on 26.8.1996 as has been noticed by the learned trial Court. The scene of offence panchanama at Exhibit AW.3/A is dated 28.12.1997. AW.3 Vassudeo Sawant also refers to the date of accident as 28.12.1997. AW.1 Vaishali Porob also states that the accident occurred on 28.12.1997. Therefore, the deceased was aged 41 years and 10 months approximately

on the date of the accident. The deceased, therefore, would have been in Government employment for about 16.2 years and not 18 years, as has been held by the learned trial Court. Learned Counsel appearing for the parties, after applying the multiplier of 16.2 have stated that the compensation payable to the deceased after deducting 1/3rd would be 8,96,000/-. So, therefore, according to us, respondents No.1 to 3 would be entitled to be paid compensation of Rs.8,96,000/-, plus Rs.4,000/- as funeral expenses and the total compensation payable comes to Rs.9,00,000/-.

7. The learned trial Court has awarded interest at the rate of 12 % per annum. Mr. Kantak, on behalf of the appellants, has invited our attention to the decision of the Apex Court in **United India Insurance Co. Ltd., etc. etc. vs. Patricia Jean Mahajan and others, etc. etc.,** reported in AIR 2002 SC 2607. The Apex Court in para 38 has stated that the rate of interest was already on decline and, therefore, reduce the interest to 9 % in place of 12 % awarded by the High Court. According to us, therefore, the learned trial Court was in error in awarding interest at the rate of 12 % and ought to have been at the rate of 9 %.

8. The appeal thus, partly, succeeds. The order of the Presiding Officer, Motor Accident Claims

Tribunal, Mapusa is modified to the extent of compensation and the rate of interest as indicated above. The appellants and respondent No.4 shall jointly and severally pay to respondents No.1 to 3 a sum of Rs.9,00,000/- with interest at the rate of 9% from the date of filing of the application till 30 days after the date of the Judgment of the trial Court.

We are informed that in pursuance of an interim order of this Court, the appellants have deposited a sum of Rs.11,25,000/- in this Court and the respondents No.1 to 3 have withdrawn Rs.2,00,000/-. The balance amount has been invested in fixed deposit in a Nationalised Bank. Respondents No.1 to 3 would, therefore, be entitled to withdraw the balance amount of compensation as held payable to them, including the amount of interest at the rate of 9 % per annum from the amount deposited by the appellants in this Court. Respondents No.1 to 3 shall also be entitled to the proportionate share of interest on the aforesaid amount. The balance amount with the proportionate share of interest shall be refunded to the appellants.

First Appeal No.61/2001 allowed on the aforesaid terms with no order as to costs.

NISHITA MHATRE, J.

P.V.HARDAS, J.

ssm.